

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT application of:

Applicant(s): Smith et al.
Serial No: 10/535,010
Filing Date: May 31, 2005
Title: FABRICATION OF WAVEGUIDES AND BRAGG GRATINGS WITH UV-IRRADIATION
Examiner: Jerry T. Rahl
Art Unit: 2874
Docket No. DYOUP0288US

**CONDITIONAL NOTICE OF APPEAL FROM THE PRIMARY EXAMINER
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

On February 27, 2008, a first reply to the final Office Action was submitted via EFS. An advisory action was received by the undersigned on April 17, 2008. On April 28, 2008, a second reply to the final Office Action was submitted. This second reply placed the application in condition for allowance by rewriting allowable claims, and cancelling rejected claims or depending them from an allowable claim.

In view of the statutory deadline of May 27, 2008 for filing a notice of appeal or taking other appropriate action, voice mail messages were left for the Examiner on May 23 and 27, 2008, but no answer was ever received from the Examiner. On May 27, 2008 a call was placed to the Examiner's Supervisory Examiner who indicated he believed the Examiner would be in his office this afternoon and he left a message for the Examiner to call applicant's representative.

As no call was received from the Examiner confirming the application is in condition for allowance, applicant hereby appeals to the Board of Patent Appeals and Interferences from the decision dated November 27, 2007, of the Primary Examiner finally rejecting claims 1, 9-11 and 14-21, in the event the application is found not in condition for allowance upon consideration of the second reply to the final Office Action.

Applicant is:		
<u> </u> a small entity	<u> X </u>	other than a small entity
\$255.00 Fee		\$510.00 Fee

Fee Payment:

<u> </u>	Attached is a check covering the aforesaid fee
<u> </u>	Credit card payment covering the fee
<u> </u>	Not required (fee paid in prior appeal in this application)
<u> X </u>	Charge fee to Deposit Account No. 18-0988 under Attorney Docket No. DYOUP0288US

If any extension of time is required to make the filing of this paper timely, applicant requests that this be considered a petition therefor. The Commissioner is authorized to charge any extension fee which may be required by this petition to Deposit Account No. 18-0988 under DYOUP0288US.

The Commissioner is authorized to charge any additional fee which may be required by this notice, or credit any overpayment, to Deposit Account No. 18-0988 under Docket No. DYOUP0288US.

Respectfully submitted,

/Don W. Bulson/

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